

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 859 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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NARENDRA CERAMICS PVT. LTD. CORRESPONDENCE

Versus

J M PANDYA

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Appearance:

MR NK PAHWA for MR PM THAKKAR for Petitioner  
NOTICE SERVED for Respondent No. 1

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CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 15/09/2000

ORAL JUDGEMENT

By means of filing this petition under Article  
226 of the Constitution, the petitioner has challenged  
legality of order dated January 16, 1988 passed by the  
Regional Provident Fund Commissioner, Gujarat State,

whereby the petitioner is directed to pay a sum of Rs.37,978.40 ps. as damages for delayed payment of amount of provident fund/family pension fund/deposit linked insurance fund and administrative charges for the period from December 1974 to September, 1983.

2. The petitioner is a Private Limited Company incorporated under the provisions of the Companies Act, 1956. It is an establishment to which Employees' Provident Fund and Miscellaneous Provisions Act, 1952 applies ("the Act" for short). It was required to pay the amount of provident fund/family pension fund/deposit linked insurance fund and administrative charges in accordance with (1) section 6 of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, (2) Para-38 of the Employees' Provident Funds Scheme, 1952, (3) Para-9 of the Employees' Family Pension Scheme, 1971 and (4) Para-8 of the Employees, Deposit Linked Insurance Scheme, 1976. The petitioner failed to pay the above-referred to amount for the period from December 1974 to September 1983. Therefore, a notice dated January 6, 1984 was issued to the petitioner calling upon it to show cause as to why damages as envisaged under section 14-B of the Act be not levied. On receipt of the notice, explanation was offered by the petitioner and the learned advocate for the petitioner was also heard. The Regional Provident Fund Commissioner, Gujarat State has passed an order dated January 16, 1988 directing the petitioner to pay a sum of Rs. 37,978.40 ps. as damages for delayed payment of amount of provident fund/family pension fund/deposit linked insurance fund and administrative charges for the period from December 1974 to September 1983. The said order is produced by the petitioner at Annexure-D to the petition. According to the petitioner, the discretion conferred upon the respondent under section 14-B of the Act to recover damages is exercised arbitrarily and, therefore, the order impugned in the petition is liable to be set aside. The petitioner has averred that the action of the respondent of imposing 100% damages for the delayed payment is unjust and punitive in nature. It is averred in the petition that due to financial difficulties on account of heavy losses as well as unawareness with the procedure relating to provident fund matters and non-availability of Manager due to accident, payment of amount due could not be made in time and, therefore, having regard to the facts of the case, recovery of damages equivalent to the amount of arrears, is not justified. The petitioner has referred to guidelines formulated by Central Board of Trustees for determination of damages and pleaded that the total amount of damages

as per those guidelines payable by the petitioner would be approximately Rs.7377/-. It is claimed in the petition that the order impugned in the petition is not warranted in the facts of the case and should be set aside. Under the circumstances, the petitioner has filed present petition and claimed relief to which reference is made earlier.

3. Mr. H.R.Shah, Assistant Provident Fund Commissioner, in the office of Regional Provident Fund Commissioner, has filed affidavit-in-reply controverting the averments made in the petition. In the reply, it is maintained that damages have been levied having regard to persistent defaults committed by the petitioner in the matter of payment of provident fund due as well as other dues and, therefore, the order impugned in the petition should not be set aside. What is claimed in the reply is that financial difficulties pleaded by the petitioner does not justify delay in depositing the amount due and, therefore, the petition should be dismissed.

4. I have heard the learned counsel for the petitioner and considered the documents forming part of the petition. It is true that there was delay on the part of the petitioner in depositing the amount due and that damages are recoverable from the petitioner in view of the provisions of section 14-B of the Act. However, Central Board of Trustees, which is the highest authority under the Act, has formulated some guidelines for assessment of damages. As per those guidelines, certain defaults made by the petitioner could not have been treated as continuous defaults. The order impugned in the petition does not indicate that while assessing damages, the respondent had considered standard table for levy of damages prescribed by the Central Board of Trustees. Moreover, Central Provident Fund Commissioner has issued guidelines as to how grace period should be calculated and rate of damages should be reduced. The record does not indicate that those guidelines were taken into consideration by the respondent while passing the order impugned in the petition. Though the power conferred on the Regional Provident Fund Commissioner to assess and recover damages is absolute, there is no manner of doubt that discretion is conferred on him in the matter of assessment of damages because section itself states that damages which may be recovered shall not exceed the amount of arrears, meaning thereby the damages assessed can be less than the amount of arrears. Having regard to the reasons which were stated by the petitioner in the reply dated February 27, 1984 produced at Annexure-B to the petition, which was submitted by the

respondent, I am of the view that the respondent has not exercised discretion vested in him under section 14-B of the Act properly and interest of justice would be served if the petitioner is directed to pay 50% of Rs.37,978.40 ps. as damages for delayed payment of amounts of provident fund/family pension fund/deposit linked insurance fund and administrative charges for the period from December 1974 to September 1983.

For the foregoing reasons, the petition partly succeeds. It is held that the petitioner shall pay Rs. 19,000/- as damages for delayed payment of provident fund/family pension fund/deposit linked insurance fund and administrative charges for the period from December 1974 to September 1983. The petitioner shall pay the amount of damages as early as possible and latest within one month from today. Rule is made absolute accordingly, with no order as to costs.

(J.M.Panchal,J.)

(patel)